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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,103	10/12/2001	Benjamin J. Zurn	44046.103.159	1709

7590 02/05/2003

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EXAMINER

GLESSNER, BRIAN E

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/977,103	ZURN ET AL.
	Examiner Brian E. Glessner	Art Unit 3635
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>31 January 2002</u> .		
2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-24</u> is/are pending in the application.		
4a) Of the above claim(s) <u>1-21</u> is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>22-24</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>12 October 2001</u> is/are: a) <input type="checkbox"/> accepted or b) <input checked="" type="checkbox"/> objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.		
If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:		
1. <input type="checkbox"/> Certified copies of the priority documents have been received.		
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.		
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).		
a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a method and a kit for repairing an insulating glass unit, classified in class 156.
 - II. Claims 22-24, drawn to a repaired insulating glass unit, classified in class 52, subclass 204.52.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed could be made by another and materially different process. For example, the hole could be formed without the use of a drill guide and a drill bit that has a stop.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Allen Groenke on 1/31/03 a provisional election was made with traverse to prosecute the invention of Group II, claims 22-24. Affirmation of this

election must be made by applicant in replying to this Office action. Claims 1-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference number 92 is not in the figures as disclose on page 12 line 9. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to because reference number 180 in figure 12 should be 280 to correspond to the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tremblay (5,345,734).

In regard to claims 22-24, Tremblay discloses a repaired insulating glass unit 10 comprising a pair of glass panes 12, 14 and a peripheral spacer 16 having a wall extending between the panes, the panes and the spacer defining a between pane space 15, the wall of the peripheral spacer defining a hole (figures 2 and 3), and a rivet body 22, 24, 26 sealingly disposed in the hole defined by the wall of the peripheral spacer. The rivet includes a body having an end wall 36 fixed to a generally cylindrical sidewall 24, and the walls of the rivet body are dimensioned to extend completely across the hole defined by the wall of the peripheral spacer (figure 3).

11. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Leopold (5,313,761).

In regard to claims 22-24, Leopold discloses a repaired insulating glass unit 10 comprising a pair of glass panes 14 and a peripheral spacer 30a-d having a wall extending between the panes, the panes and the spacer defining a between pane space 20, the wall of the peripheral spacer defining a hole (figure 4), and a rivet body 106 sealingly (110) disposed in the hole defined by the wall of the peripheral spacer. The rivet includes a body having an end wall 116 fixed to a generally cylindrical sidewall 114, and the walls of the rivet body are dimensioned to extend completely across the hole defined by the wall of the peripheral spacer (figure 4).

12. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (4,520,602).

In regard to claims 22-24, Miller discloses a repaired insulating glass unit (figures 1 and 3) comprising a pair of glass panes 12, 17 and a peripheral spacer 14, 15 having a wall extending between the panes, the panes and the spacer defining a between pane space, the wall of the peripheral spacer defining a hole (figures 7 and 10), and a rivet body 35 sealingly disposed in the hole defined by the wall of the peripheral spacer. The rivet includes a body having an end wall fixed to a generally cylindrical sidewall, and the walls of the rivet body are dimensioned to extend completely across the hole defined by the wall of the peripheral spacer (figure 7).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Guhl et al., Lise, Bayer, Gould, D'Eustachio, and Anderson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G.

January 31, 2003



**BRIAN E. GLESSNER
PATENT EXAMINER**